

April 13, 2010

Sonia Augusthy, Esquire
Deputy Attorney General
Department of Justice
820 N. French Street, 7th floor
Wilmington, DE 19801
Attorney for the State

Louis B. Ferrara, Esquire
Ferrara & Haley
1716 Wawaset Street
P.O. Box 188
Wilmington, DE 19899-0188
Attorney for the Defendant

Re: *State of Delaware v. Charles L. Rogers*
Case No.: 0804005406

MEMORANDUM OPINION

Dear Counsel:

The Court is in receipt of Mr. Ferrara's letter of April 8, 2010 on the above captioned matter. The letter requested that the Court strike the State's submission of Charles Rogers certified driving record because it was submitted after "evidence was closed." For the reasons set forth below, the Court declines to strike the certified driving record of the defendant. First, this Court has already concluded in its opinion that a certified driving record from the Division of Motor Vehicles is not a prerequisite for sentencing the Defendant as a second offender of 21 *Del.C.* §4177(a). Second, this Court finds it has broad discretion as set forth below on what evidence and information to receive and consider at the sentencing hearing to be scheduled.

In Delaware, a sentencing court has broad discretion to consider, "... [i]nformation pertaining to a defendant's personal history and behavior which is not confined exclusively to conduct for which that defendant was convicted."¹ The United States Constitution endorses such a broad inquiry. "In accordance with modern concepts of individualized punishment, a

¹ *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992) (quoting *Lake v. State*, 494 A.2d 166 (Del. 1984)).

sentencing judge must have ‘the fullest information possible concerning the defendant’s life and characteristics.’”² A sentencing judge enjoys broad discretion in determining what information to rely on in imposing an appropriate sentence. However, a sentencing court abuses its discretion [only] if it sentences on the basis of inaccurate or unreliable information.³ Here the information contained in the defendant’s certified driving record from the Division of Motor Vehicles is not alleged to be inaccurate or unreliable, but it is alleged to be procedurally barred from consideration because the defendant does not want the Court to consider it. This Court does not find that argument persuasive. Case law and policy dictate that the Court must have the fullest information possible in sentencing a defendant.

Finally, to the extent the defendant argues this Court should close the record to bar sentencing of the defendant as a second offense of 21 *Del.C.* §4177, the Court *sua sponte* opens the record. Justice requires that if a defendant violates 21 *Del.C.* §4177(a) for a second time in five (5) years, a defendant should not escape the Title 21 penalty provisions because of a legal argument to close the record.

Therefore, the Court has received and docketed into evidence Charles Rogers’ certified driving record for purposes of sentencing the defendant as a record offender of 21 *Del.C.* §4177(a). The Court shall forthwith proceed with sentencing as scheduled by the Criminal Clerk.

IT IS SO ORDERED this 13th day of April, 2010.

John K. Welch, Judge

cc: Ms. Juanette West
CCP, Scheduling Case Manager

² *Id.* (quoting *Williams v. New York*, 337 U.S. 241 (1949)).

³ *Id.*